

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADIDAS AG and)
ADIDAS AMERICA, INC.,)
)
Plaintiffs,)
) C.A. No. 14-130 (GMS)
v.)
) **JURY TRIAL DEMANDED**
UNDER ARMOUR, INC. and)
MAPMYFITNESS, INC.,)
)
Defendants.)

PLAINTIFFS' RESPONSIVE CLAIM CONSTRUCTION BRIEF

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April 6, 2015

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I. Introduction

Defendants' opening brief relies on Plaintiffs' infringement contentions as the basis for Defendants' claim construction positions.¹ Although Defendants do so under the guise of creating inconsistencies or paradoxes, the arguments betray their true purpose, to create non-infringement positions. Defendants' march to rewrite the claims violates practically every cannon or established principle of claim construction from reading limitations into the claims, rewriting otherwise plain and ordinary terms, limiting claims to only a single embodiment and excluding other disclosed embodiments, relying on extrinsic evidence to vary what is plainly supported by the specification, and so on.

Plaintiffs' proposed constructions on the other hand find clear support in the specification, follow the plain and ordinary meaning of the terms, and are consistent with the teachings and disclosures of the Werner and Ellis patent specifications.

II. Werner Family Claim Terms²

A. "at least one of a set including...and..."

Defendants' argument relies entirely on one inapplicable case and a select example from the specification. When the correct legal standard is used, and the entire specification is considered, adidas's proposed construction is the correct and supported one.

Defendants' rely on *SuperGuide Corp. v. DirectTV Enters.*, 358 F.3d 870, 886 (Fed. Cir. 2004), to support what amounts to re-writing the claims to recite "a set" rather than "at least one of" a set. But *SuperGuide* is plainly distinguishable. In *SuperGuide*, "[e]very disclosed embodiment [taught] that the user must choose a value for each designated category." *Id.* at 887.

¹ See, e.g., D.I. 86 at 6, 10-13, 15.

² The Werner patents share a specification and all citations to the patent specification in this section are to the '867 Patent.

In contrast, the Werner specification discloses embodiments that comprise only one or two of the listed tools as explained in detail in adidas's opening brief. (D.I. 85 at 6.)

Defendants' statement that the "only toolset embodiment disclosed in the 752 Patent includes one of each"³ a review, rating, and annotation tool is incorrect; in fact, the specification teaches the opposite. Nothing in the '752 specification requires that all three tools be present for the invention to work. adidas's opening brief identified at least one such example. (D.I. 85 at 6.) There are other examples as well. Figure 2A and the accompanying text discloses a toolset that allows the user to "annotate a route," but that embodiment does not include, or much less require, a review tool or a rating tool. *See* J.A. at Tab 1, col. 4:33-37 ("portable fitness device 12 may include one or more manually manipulable input buttons 80 that permit athlete 14 to annotate a route while athlete 14 is traversing the route"). Even the embodiment Defendants cite, Figure 5B, states that the ability to include information in addition to an annotation is preferable, but not required. *See* J.A. at Tab 1, col. 15:60-65 ("in addition to supporting user annotation of route maps 442 and 500, GUI window 440 *preferably* permits the user to enter additional information.") (emphasis added). Other examples, such as Figure 4E (shown annotated at page 8 of adidas's opening brief), disclose a "route rating," and "textual reviews," but do not show (or again, much less require) an annotation tool. *See* J.A. at Tab 1, Fig. 4E and col. 12:21-37.⁴

SuperGuide is inapplicable where, as here, the patent specification discloses various embodiments that may optionally include one or more of the various tools in different combinations. *See, e.g., Fujifilm Corp. v. Motorola Mobility LLC.*, No. 12-cv-03587-WHO,

³ D.I. 86 at 6.

⁴ Figure 4E does not include reference numbers for the route rating or reviews. Through a typographical or printing error, these reference numbers, 360 and 362, are included in the patent specification but not the Figure.

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